



HODSON BROADCASTING

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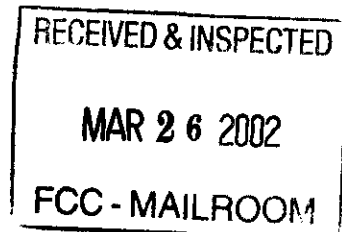
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March 15, 2002

William F. Caton, Acting Secretary
Federal Communications Commission
Office of the Secretary
445 Twelfth Street, S.W., TW-A325
Washington, D.C. 20554



(MM Docket # 01-135; RM-10154, 10326, 10327)

Dear Mr. Caton:

Hodson Broadcasting respectfully submits the enclosed Petition For Leave to Intervene and associated Motion to Dismiss for filing in response to the Commission's Notice of Proposed Rule Making (*DA 01-1488*) concerning the allotment of FM Channel 291C2 (106.1 MHz) to Caliente, Nevada.

Pursuant to Sections 1.415 and 1.419 of the Commission's Rules, please find enclosed an original (paper-clipped), plus four (4) copies of my company's pleading which pertain to the above-mentioned proceeding. Mailing certification, as prescribed in Sections 1.420 and 1.47 of the Commission's Rules, for all required Parties is included as the final page in this submission.

Thanks Bill, for your time, attention, and concern in this matter.

Sincerely,

Richard Dean Hodson

Richard Dean Hodson, d/b/a/
Hodson Broadcasting

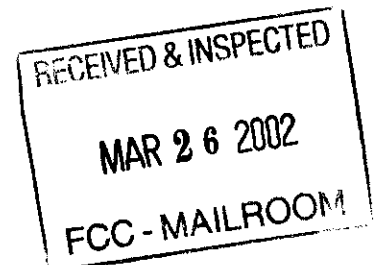
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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the matter of

Amendment of 73.202(b),
Table of Allotments,
FM Broadcast Stations
(Caliente, Amargosa Valley, Moapa,
Nevada; Kanab, Escalante, Utah; and
Tecopa, California; etc.)

MM Docket No. 01-135
RM-10154, 10326, 10327



To: Chief, Allocations Branch
Mass Media Bureau
Policy and Rules Division

PETITION FOR LEAVE TO INTERVENE
MOTION TO DISMISS RULEMAKING & COUNTERPROPOSALS

Hodson Broadcasting, a sole proprietorship formed by Richard Dean Hodson (hereafter called "Hodson"), pursuant to Section 1.223(c) of the Commission's Rules, belatedly, yet respectfully with very good cause, submits the following "Petition for Leave to Intervene"¹ and urgently motions the Commission to dismiss and terminate Schleicher County Radio's ("SCR") Petition for Rule Making, plus both Marathon Media Group, L.L.C.'s ("Marathon") and M&M Broadcasting, L.L.C.'s ("M&M") subsequent Counterproposals related with the *Notice of Proposed Rule Making* in the above-captioned proceeding. Hodson is the primary party of interest to the FM

¹47 C.F.R. §1.223(c) states, "Any person desiring to file a petition for leave to intervene later than 30 days after the publication in the *Federal Register*...shall set forth the interest of petitioner in the proceeding, show how such petitioner's participation will assist the Commission in the determination of the issues in question, and must set forth any proposed issues in addition to those already designated..."(10-1-01 Edition)

allotment for Tecopa, California,² mentioned in Marathon's Counterproposal, and has not previously addressed very pertinent issues involved in this proceeding, nor was ever properly notified by Marathon of their proposed Channel substitution for this prior Commission-approved, California allocation in the currently unserved community of Tecopa.

The *Notice* originally proposed to amend the FM Table of Allotments, Section 73.202(b) of the Commission's Rules, by allocating FM Channel 291C2 to Caliente, Nevada, as that area's second local aural transmission service. The Commission adopted the *NPRM* in response to a Petition for Rule Making submitted from SCR and received at the Commission on June 11, 2001. In response, Marathon filed a Counterproposal on August 13, 2001, that involves unwarranted FM Channel restructuring for five various small communities in three different states, just to permit them to move one of many broadcast licenses, not only an overwhelming 120 miles distant to its currently licensed small community, but to an entirely different state altogether. Another Counterproposal was offered by M&M, but because this additional counterplan does not involve the community of Tecopa or its allotment, addressing any issues arising from this secondary spawning will be neglected. The Commission issued Public Notice Report # 2506 on October 23, 2001, which opened both Counterproposals to a brief 15 day response window. No decision has yet been determined on this Caliente rule making proceeding.

After examining the Commission's *NPRM* and pair of related Counterproposals in November 2001, Hodson was compelled to file comments which oppose this addition to the FM Table of Allotments on several grounds, but discovered every comment or response period for this proceeding had already elapsed. Hodson had little remedy but to wait for a Commission decision and pursue Petition for Reconsideration or Application for Review options, in the event Marathon's suggestions would influence the Commission to change Tecopa's allotment from Channel 291 to any other frequency. However, because Marathon's recent Motion for Leave to File Supplement

²*Report and Order* (DA 99-1375), released July 16, 1999. See also: MM Docket No. 99-46, RM-9470, 14 FCC Rcd 2829 (1999).

was acceptably filed twice with the Commission, on February 26, 2002, and again on March 4, 2002, outside of a comment window for this case, Hodson felt it not inappropriate to also add important delayed information to this proceeding, which can now offer insight and wisdom from the Tecopa perspective, which was not properly regarded by Marathon and is not currently a portion of the complete record in this matter. Objections to this submission by Marathon should be minimal, due in part to their recent permitted additions to the record. The Commission should entertain this motion, not only to complete the record, but to address the public interest issue of Tecopa being allowed an initial voice into a potential action that could impact and influence what Channel these community residents would be able to receive and listen to local, long-awaited, FM radio broadcast programming.

The Regulatory Flexibility Act³ requires an agency to describe any significant alternatives that it has considered in reaching its proposed approach, which may, among others, include the following four alternatives: (1) the establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance or reporting requirements under the rule for small entities; (3) the use of performance, rather than design, standards; and (4) an exemption from coverage of the rule, or any part thereof, for small entities. Section 2 of the RFA contains a Congressional declaration⁴ that (3) uniform Federal regulatory and reporting requirements have in numerous instances imposed unnecessary and disproportionately burdensome demands including legal, accounting and consulting costs upon small businesses, small organizations, and small governmental jurisdictions with limited resources; (4) the failure to recognize differences in the scale and resources of regulated entities has in numerous instances adversely affected competition in the

³See 5 U.S.C. § 603(c). Although Paragraph 5 of *NPRM* (DA 01-1488) disregards this Act in FM Allotment proceedings under 46 FR 11549, it should be strictly noted and considered that citation certification presumed “routine Table amendments” in “mostly one community, one party cases”, which this instant case is not. See 46 FR 11549 at 11550, Paragraph 5.

⁴Pub. L. 96-354, September 19, 1980, 94 Stat. 1164; 5 U.S.C. 601 *et seq.* (Paragraphs 1 and 2 omitted).

marketplace, discouraged innovation, and restricted improvements in productivity; (5) unnecessary regulations create entry barriers in many industries and discourage potential entrepreneurs from introducing beneficial products and processes; (6) the practice of treating all regulated businesses, organizations, and governmental jurisdictions as equivalent may lead to inefficient use of regulatory agency resources, enforcement problems, and, in some cases, to actions inconsistent with the legislative intent... (7) alternative regulatory approaches which do not conflict with the stated objectives of applicable statutes may be available which minimize the significant economic impact of rules on small businesses, small organizations, and small governmental jurisdictions; (8) the process by which Federal regulations are developed and adopted should be reformed to require agencies to solicit the ideas and comments of small businesses, small organizations, and small governmental jurisdictions to examine the impact of proposed and existing rules on such entities, and to review the continued need for existing rules. Hodson meets the established criteria to be regarded as a small business entity as defined by the Small Business Act,⁵ as Hodson is the classic example of a small business “concern” - one station, one signal, one owner, with NO further broadcast interests.

Prior to Hodson’s involvement in the Tecopa community, personal broadcast employment experience was gained from three FM, two AM, and four radio networks in southern Nevada between 1986 and 1998. From 1995-98, Hodson reinforced his broadcasting education and experience with a 3.89 GPA at the Community College of Southern Nevada, graduating with high honors and two Associate of Applied Science Degrees - one in Electronic Engineering, the other in Telecommunications. Hodson Broadcasting was developed as a sole proprietorship by Richard Dean Hodson in March 1997, through a Certificate of Business filed in the County of Clark, State of Nevada. In August 1997, Hodson bought a Collins ten kilowatt FM transmitter, tuned

⁵See 15 U.S.C. § 632. Hodson is independently owned and operated, not dominant in its field of operation, and satisfies any and all additional SBA criteria. It should be strongly noted that 13 C.F.R. § 121.201, NAICS code 513111 and 513112, the current Small Business Administration code defining a radio broadcasting station that has \$5 million or less in annual receipts as a small business, needs modification to \$3 million or less to more accurately reflect radio realities.

to Channel 291 (106.1 MHz), from Tedd W. Dumas, general manager of KWLX Radio, in Many, Louisiana. After another 18 months of rigorous radio broadcast research, which included a FCC trip through Washington D.C., Hodson filed with the Commission for an allocation in Tecopa, California, in December 1998. Channel 291A was added to the FM Table of Allotments for the community of Tecopa, effective August 1999. In the interim, Hodson registered with the City of Las Vegas in April 1999, for a home-based broadcast business and was issued a license. In February 2000, the Clark County Board of County Commissions approved Hodson for a two-year construction permit to develop family property located in Sandy Valley, Nevada, as a studio site for broadcast operations. Because of federal regulatory delays beyond Hodson's control, an Extension of Time application has recently been filed with Clark County on the above permit decision. As of March 15, 2002, Hodson *continually prays* and patiently awaits for FCC action, which involves opening the FM Broadcast Auction filing window, already postponed on several occasions, for all vacant allotments, but most particularly the Tecopa allocation, approved over two and a half years ago via Hodson's Petition for Rulemaking. Hodson has been legally pursuing committed plans in its sole mission to develop a "mom & pop" broadcasting venture in the Tecopa region, which will feature consecutive, full-time licensee operation and involvement of the radio facility, plus ten percent of total on-air time devoted to local Christian programming and Sunday fellowship services, amongst other diverse, non-traditional, community-intense programming.

Contrasting Marathon, according to Broadcasting and Cable Yearbook 2001, is really two separate companies headed by the same principals, specifically President Chris Devine and Vice-President Bruce Buzil. Between Marathon Media L.L.P. and Marathon Media Group L.L.C., this much larger radio conglomerate owns at last count, 71 total individual broadcast licenses sprawled amongst nine midwest and western states. Forty-eight FM and 23 AM facilities have been amassed by Marathon, as they boast radio broadcast interests in Idaho, Illinois, Iowa, Michigan, Minnesota, Missouri, Montana, Utah, and their base State of Wisconsin.

Commission policies have formerly created a extremely burdensome hardship

for Hodson in several ways, and should not be aggrieved further. The transition from comparative hearings to competitive bidding has resulted in a staggered length of time entities must wait to see their petitions through, and in some cases, that time already exceeds five years. Auction participation creates bias toward start-up broadcasters because they must compete financially with stronger, more stable broadcasting groups for quasi-monopolistic spectrum space. Under this newer criteria of forced uniform auction filing windows, which has cumulatively grown into a multi-year, procrastinative process, Hodson has had to oppose other regional, co-channel utilization of Channel 291⁵, that could have easily caused potential interference concerns to Tecopa's way overdue aural transmission service. Regardless of how long the FM Broadcast Auction postponements continue, initial petitioners for frequencies gain no advantage in bidding, even after enormous efforts and exhaustive expenditures, such as Hodson has incurred to amend the FM Table. Other businesses, like Marathon, subsequently treat delayed vacant and new allocations as abandoned, because a significant portion of these allotments have just been stagnate for too many years. No wonder Marathon neglected to notify and serve Hodson of Tecopa being involved in this outlandish channel change scheme-they probably felt after all this elapsed time, any primary party of interest by now would perhaps be rightly disinterested.

Since Hodson has clearly addressed its reasons for intervention in this proceeding, termination and dismissal of SCR's Petition and Marathon's Counterproposal should earnestly be discussed. General Commission practice dictates in Rule Making procedures, a continued expression of interest⁶ by the original petitioner must be present in order to preserve the livelihood of the allocation request.

⁵*Report and Order* (DA 00-166), released February 1, 2000. See also: *NPRM* (DA 99-686), MM Docket No. 99-118, RM-9549, released April 9, 1999 (Commission denied Mountain West's petition to amend the FM Table to reflect an addition of Channel 291C1 for Logandale, Nevada).

⁶See Instant *NPRM* (DA 01-1488). Appendix, Paragraph 2. *Showings Required*. (The proponent of a proposed allotment is also expected to file comments even if it only resubmits or incorporates by reference its former pleadings. It should also restate its present intention to apply for the channel if it is allotted and, if authorized, to build a station promptly. Failure to file may lead to denial of the request.).

Let the record reflect that SCR, the original petitioning party, did not comment as required, a mandate and critical nexus for further consideration in FM allotment cases. Furthermore, neither Marathon's nor M & M's Counterproposal expressed any interest in applying for a new Channel in Caliente, Nevada; just in their own, newly proposed, allocation creations. Since both parties counterplans were produced by the same consulting engineer, Reynolds Technical Associates of Montgomery, Alabama, a harmonious alternative frequency of Channel 299C2 was suggested for each respective submission, only so that Caliente's community concerns could be conveniently disregarded and replaced with their own self-centered, signal switch schemes to selectively serve certain areas, while they admittedly create significant enough loss area in this transition to warrant further allocation action in various communities, including ones these parties currently are involved in and wish to forsake. In all honesty, it truly appears that both countersubmissions in this proceeding are really just crafty and covert attempts to justify Commission permission to desert their original community of licenses in smaller areas, without being subject to auction procedure or public scrutiny windows, for a more lucrative transmitter position in a population pocket that would easily be within signal reach of the top 40 radio market of Las Vegas, Nevada.

If Marathon and M&M could have been content with more reasonable alternatives and did not have such deceitful ulterior motives, suggesting options for either counterproponent might have been feasible. These broadcasters that seek relocation could instead remain in their respective communities, so as not to disrupt current service to their listeners and clients, and apply to the Commission for a low-power translator to service these areas in which they wish to move. Another possible solution to quench those gypsy radio desires would be to create *only Class A allocations* for any new community specified and worthy, and then subject these new Channels to auction, as with any other recently created addition to the Commercial FM Table of Allotments. Either of Hodson's worthwhile recommendations would have immensely diminished remote possibilities of signal interference concerns and removed the need for complicated frequency shuffles and clandestine consent agreements between licensees. Marathon benefits by saving financial resources that would

otherwise be committed to Argosa Broadcasting, L.L.C. (“Argosa”) for compensation to utilize another Channel, which already happens to be approved for the deserving community of Tecopa, California. Since Argosa just recently entered into the picture, they most likely are not preferential concerning frequency location and would be content to operate in Amargosa Valley on whatever Channel their transferred construction permit specifies, provided Marathon hadn’t subtly persuaded them otherwise. Changing frequencies for the Tecopa allocation however, would produce prejudice and bias toward Hodson, not just considering the extended delay imposed on this party already as a direct result of Commission policy, but because Hodson possesses a ten kilowatt transmitter formally *tuned to Channel 291*, as a business asset in preparation for its Tecopa project.

In conclusion, although outright denial is the appropriate remedy for any FM allotment absent a continued expression of interest from *any party involved* in the rule making process, a fair and impartial compromise could possibly still be achieved for all parties involved in this proceeding, with a variety of options less critical than ones previously suggested. The current pair of counterproposals only offer slanted, channel change and signal switch solutions, with the disastrous end result bypassing Commission FM Auction procedures and neglecting smaller community concerns, in lieu of more lucrative and expedient transmitter locations. Hodson is obviously very committed to the community of Tecopa, yet offers objective options like low-power translators to service separate areas, instead of drastic and sneaky relocation suggestions, and only Class A approvals in any newly proposed areas discussed within this proceeding. These choices encourage procedure integrity and due process to the various parties involved, while addressing Commission concerns of spectrum interference and physical distance separation between broadcasters.

Based on the foregoing, Hodson prayerfully requests that this Petition for Leave to Intervene be granted and that the included Motion to Dismiss would influence the Commission to reconsider its *NPRM* and not amend the FM Table of Allotments, Section 73.202(b) of the Commission’s Rules, to reflect any new allocations for Caliente, Nevada, regardless of Class or Channel, and that this entire proceeding be

terminated. Furthermore, Hodson earnestly avers that the Marathon Counterproposal, along with M & M's similar countersubmission, should also completely expire with the MM Docket that spawned it.

Respectfully submitted,

Richard Dean Hodson

Richard Dean Hodson, d/b/a/

HODSON BROADCASTING

Hodson Broadcasting

P.O. Box 66

Tecopa, CA 92389-0066

March 15, 2002

CERTIFICATE OF SERVICE AND MAILING

I hereby certify that a true and correct copy of this Petition for Leave to Intervene and attached Motion to Dismiss, filed by Hodson Broadcasting, which opposes FCC RM-10154, RM-10326, and RM-10327, was served upon the following Parties according to Sections 1.420 (b), (c), and (f), plus Sections 1.47 (d) and (f) of the Commission's Rules, by mailing a copy of above stated document, via certified U.S. Mail, first class postage prepaid, on the 15th day of March, 2002, properly addressed to:

Ms. Sharon P. McDonald
Federal Communications Commission
445 12th Street, S.W., Room 3-A226
Washington, D.C. 20554

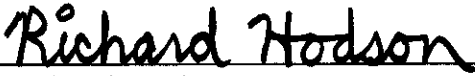
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